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SAZERAC COMPANY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| DEBORAH DI GRAZIA,<br><br>Plaintiff,<br><br>v.<br><br>SAZERAC COMPANY, INC., BROWN-FORMAN, INC., and TEQUILA HERRADURA, S.A. de C.V.,<br><br>Defendants. | Case No. 5:08-CV-01562-JW<br><br>**DEFENDANT SAZERAC COMPANY, INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** |

Defendant Sazerac Company, Inc. ("Sazerac"), for itself and no other defendant, hereby responds to Plaintiff Deborah di Grazia's ("Plaintiff") First Amended Complaint ("FAC") as follows:

1. The first sentence of Paragraph 1 sets forth a legal conclusion to which no answer is required. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1, and, on that basis, denies them.

2. Sazerac admits that it entered into a written agreement with Plaintiff's now deceased husband Loris di Grazia ("Mr. di Grazia") (the "Payment Agreement"), and a written

agreement with Tequila Herradura S.A. ("Herradura") (the "Distribution Agreement"). As to the terms of these agreements, the documents speak for themselves. Sazerac is without knowledge of information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2, and, on that basis, denies them.

3. Sazerac admits that it made payments to Mr. di Grazia and, following his death, to the Plaintiff, in accordance with the terms of the Payment Agreement. Whether Plaintiff was the "permissible assignee of Mr. di Grazia's rights" is a legal conclusion to which no answer is required.

4. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and, on that basis, denies them.

5. The first sentence of Paragraph 5 purports to describe a term of the Distribution Agreement. The terms of the Distribution Agreement speak for themselves. Sazerac admits that in or about 2007 it entered into an agreement with Brown-Forman. Sazerac is without information sufficient to form a belief as to the remaining allegations in Paragraph 5, and, on that basis, denies them.

6. Sazerac denies the allegations contained in the first sentence of Paragraph 6. Sazerac admits that after it stopped making purchases of products from Herradura, it no longer made payments to plaintiff pursuant to the terms of the Payment Agreement.

7. Sazerac admits that after it stopped making any purchases of products from Herradura, it no longer made payments to plaintiff pursuant to the terms of the Payment Agreement.

8. Sazerac denies the allegations of Paragraph 8.

9. Paragraph 9 sets forth legal conclusions to which no answer is required.

10. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and on that basis, denies them.

11. Sazerac admits that it is a Louisiana corporation with its principal place of business in New Orleans, Louisiana, and is an importer, seller, marketer and distributor of spirits in the United States.

12. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and, on that basis, denies them.

13. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and on that basis, denies them.

14. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and, on that basis, denies them.

15. Sazerac admits that it is a Louisiana corporation with its principal place of business in New Orleans, Louisiana. Sazerac admits that it is registered to do business in California and maintains an agent for service of process in California. As to the allegations relating to the terms of the Payment Agreement, the document speaks for itself. The remaining allegations in Paragraph 15 set forth legal conclusions to which no answer is required.

16. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and, on that basis, denies them.

17. As to the first sentence, Sazerac is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17, and, on that basis, denies them. As to the remaining allegations, they set forth legal conclusions to which no answer is required, or they relate to the terms of the Distribution Agreement, the terms of which speak for itself.

18. Paragraph 18 sets forth a legal conclusion to which no answer is required.

19. Paragraph 19 sets forth a legal conclusion to which no answer is required.

20. Paragraph 20 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 20 contains allegations of fact, Sazerac is without knowledge or information sufficient to form a belief as to the truth of those allegations, and, on that basis, denies them.

21. Sazerac is without information or belief sufficient to form a belief as to the truth of the allegations in Paragraph 21, and, on that basis, denies them.

22. Sazerac admits that it entered into the Payment Agreement with Mr. di Grazia. The terms of the Payment Agreement speak for themselves.

23. The terms of the Payment Agreement and Distribution Agreement speak for

themselves. Sazerac admits that it has paid Mr. di Grazia and Mrs. di Grazia millions of dollars pursuant to the terms of the Payment Agreement.

24. Sazerac admits that it entered into the Distribution Agreement with Herradura. The Distribution Agreement speaks for itself. To the extent Paragraph 24 alleges that Sazerac entered into the Distribution Agreement through arrangements made by Mr. di Grazia, Sazerac denies the allegation set forth in Paragraph 24.

25. The Distribution Agreement speaks for itself.

26. Sazerac admits that it made purchases of Herradura brands and payments to Mr. di Grazia.

27. Sazerac is without knowledge or information sufficient to form a belief as to the date of Mr. di Grazia's death. Sazerac admits that it made payments to Plaintiff under the Payment Agreement. The remaining allegations in Paragraph 27 contain legal conclusions to which no answer is required.

28. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28, and, on that basis, denies them.

29. Sazerac admits that in or about 2007 it entered into an agreement with Brown-Forman. Sazerac is without information sufficient to form a belief as to the remaining allegations in Paragraph 29, and, on that basis, denies them.

30. Sazerac denies the allegations contained in the first sentence of Paragraph 30. Sazerac admits that after it stopped making purchases of products from Herradura, it no longer made payments to plaintiff pursuant to the terms of the Payment Agreement.

31. Sazerac admits that after it stopped making any purchases of products from Herradura, it no longer made payments to plaintiff pursuant to the terms of the Payment Agreement.

32. Paragraph 32 sets forth legal conclusions to which no answer is required.

33. Sazerac incorporates by reference its answers to Paragraphs 1-32.

34. Paragraph 34 set forth conclusions of law to which no answers are required. To the extent that Paragraph 34 contains allegations of fact, Sazerac denies those allegations.

35. Paragraph 35 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 35 contains allegations of fact, Sazerac denies those allegations.

36. Paragraph 36 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 36 contains allegations of fact, Sazerac denies those allegations.

37. Paragraph 37 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 37 contains allegations of fact, Sazerac denies those allegations.

38. Paragraph 38 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 38 contains allegations of fact, Sazerac denies those allegations.

39. Paragraph 39 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 39 contains allegations of fact, Sazerac denies those allegations.

40. Paragraph 40 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 40 contains allegations of fact, Sazerac denies those allegations.

41. Paragraph 41 sets forth Plaintiff's prayer for relief to which no answer is required.

42. Sazerac incorporates by reference its answers to Paragraphs 1-41.

43. Paragraph 43 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 43 contains allegations of fact, Sazerac denies those allegations.

44. Paragraph 44 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 44 contains allegations of fact, Sazerac denies those allegations.

45. Paragraph 45 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 45 contains allegations of fact, Sazerac denies those allegations.

46. Paragraph 46 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 46 contains allegations of fact, Sazerac denies those allegations.

47. Paragraph 47 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 47 contains allegations of fact, Sazerac denies those allegations.

48. Paragraph 48 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 48 contains allegations of fact, Sazerac denies those allegations.

49. Paragraph 49 sets forth Plaintiff's prayer for relief to which no answer is required.

50. Sazerac incorporates by reference its answers to Paragraphs 1-49.

51. Paragraph 51 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 51 contains allegations of fact, Sazerac denies those allegations.

52. Paragraph 52 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 52 contains allegations of fact, Sazerac denies those allegations.

53. Paragraph 53 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 53 contains allegations of fact, Sazerac denies those allegations.

54. Paragraph 54 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 54 contains allegations of fact, Sazerac denies those allegations.

55. Paragraph 55 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 55 contains allegations of fact, Sazerac denies those allegations.

56. Paragraph 56 sets forth legal conclusions to which no answer is required. To the extent that Paragraph 56 contains allegations of fact, Sazerac denies those allegations.

57. Paragraph 57 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 57 contains allegations of fact, Sazerac denies those allegations.

58. Paragraph 58 sets forth Plaintiff's prayer for relief to which no answer is required.

59. Sazerac incorporates by reference its answers to Paragraphs 1-59.

60. Paragraph 60 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 60 contains allegations of fact, Sazerac denies those allegations.

61. The terms of the Payment Agreement speak for themselves.

62. The terms of the Royalty Agreement speak for themselves. The remaining allegations in Paragraph 62 set forth legal conclusions to which no answer is required.

63. Sazerac admits that in or about 2007 it entered into an agreement with Brown-Forman. The remaining allegations in Paragraph 63 set forth legal conclusions to which no answer is required. To the extent the remaining allegations of Paragraph 63 contain allegations of fact, Sazerac denies those allegations.

64. Paragraph 64 sets forth legal conclusions to which no answers are required. To the extent that Paragraph 64 contains allegations of fact, Sazerac denies those allegations.

65. Paragraph 65 sets forth Plaintiff's prayer for relief to which no answer is required.

66. Sazerac incorporates by reference its answers to Paragraphs 1-65.

67. Paragraph 67 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 67 contains allegations of fact, Sazerac denies those allegations.

68. Paragraph 68 sets forth Plaintiff's prayer for relief to which no answer is required.

69. Sazerac incorporates by reference its answers to Paragraphs 1-68.

70. Paragraph 70 sets forth a legal conclusion to which no answer is required.

71. The Payment Agreement speaks for itself. The remaining allegations in Paragraph 71 set forth a legal conclusion to which no answer is required. To the extent the remaining allegations of Paragraph 71 contain allegations of fact, Sazerac denies those allegations.

72. Sazerac denies that it owes Plaintiff any amount of money.

73. Sazerac admits that since the time it stopped making payments to Plaintiff pursuant to the terms of the Payment Agreement, it has not produced to Plaintiff records associated with any purchases or transactions involving the rights to distribute Herradura Brands. Sazerac denies that it owes Plaintiff any amount of money.

74. Paragraph 74 sets forth Plaintiff's prayer for relief to which no answer is required.

75. Sazerac incorporates by reference its answers to Paragraphs 1-74.

76. The terms of the Payment Agreement speak for themselves.

77. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77.

78. The third sentence of Paragraph 78 purports to describe a term of the Distribution Agreement. The terms of the Distribution Agreement speak for themselves. Sazerac is without information sufficient to form a belief as to the remaining allegations in Paragraph 78, and, on that basis, denies them.

79. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79, and, on that basis, denies them.

80. Sazerac is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80, and, on that basis, denies them.

81. Paragraph 81 sets forth a legal conclusion to which no answer is required.

82. Paragraph 82 sets forth a legal conclusion to which no answer is required.

83. Paragraph 83 sets forth a legal conclusion to which no answer is required.

84. Sazerac incorporates by reference its answers to Paragraphs 1-83.

85. Paragraph 85 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 85 contains allegations of fact, Sazerac denies those allegations.

86. Paragraph 86 sets forth a legal conclusion to which no answer is required.

87. Paragraph 87 sets forth a legal conclusion to which no answer is required. To the extent that Paragraph 87 contains allegations of fact, Sazerac denies those allegations.

The FAC at page 15, line 20, through page 16, line 2, sets forth Plaintiff's prayer for relief to which no answer is required. Sazerac denies that Plaintiff is entitled to any relief whatsoever.

Any allegations contained in Plaintiff's FAC that are not expressly admitted herein are hereby denied by Sazerac.

## AFFIRMATIVE DEFENSES

### FIRST AFFIRMATIVE DEFENSE – FAILURE TO STATE A CAUSE OF ACTION

1. Plaintiff's FAC and each and every cause of action alleged therein, fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

### SECOND AFFIRMATIVE DEFENSE – GOOD FAITH

2. Plaintiff's FAC and each and every cause of action contained therein is barred because Sazerac at all times acted in good faith and within the reasonable expectations of the parties.

### THIRD AFFIRMATIVE DEFENSE – FULLY INTEGRATED WRITTEN CONTRACT

3. Plaintiff's FAC and each and every cause of action contained therein is barred because Plaintiff and Sazerac entered into a fully integrated written contract the terms of which govern the instant dispute.

### FOURTH AFFIRMATIVE DEFENSE – LACHES

4. Plaintiff's FAC and each and every cause of action contained therein is barred by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE – WAIVER**

5. Plaintiff's FAC and each and every cause of action contained therein is barred by the doctrine of waiver.

**SIXTH AFFIRMATIVE DEFENSE – ESTOPPEL**

6. Plaintiff's FAC and each and every cause of action contained therein is barred by the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS**

7. Plaintiff's FAC and each and every cause of action contained therein is barred by the applicable statute of limitations.

**EIGHTH AFFIRMATIVE DEFENSE – NO WILLFUL VIOLATION OF RIGHTS**

8. Plaintiff's FAC and each and every cause of action contained therein is barred because Sazerac asserts that if Plaintiff's rights were violated, which Sazerac denies, Sazerac did not do so willfully.

**NINTH AFFIRMATIVE DEFENSE – NO ENTITLEMENT TO PUNITIVE DAMAGES**

9. Plaintiff's claim for punitive damages is not authorized by statute or by contract or by the Constitution, and is therefore improper.

**TENTH AFFIRMATIVE DEFENSE – BIFURCATION OF PUNITIVE DAMAGES**

10. Sazerac is entitled to bifurcation of any claims for punitive damages.

**ELEVENTH AFFIRMATIVE DEFENSE – NO ENTITLEMENT TO ATTORNEY'S FEES**

11. Plaintiff's claims for attorneys' fees is not authorized by statute or contract, and is therefore improper.

**TWELFTH AFFIRMATIVE DEFENSE – JUSTIFICATION**

12. Plaintiff's FAC and each and every cause of action contained therein is barred because Sazerac was justified in doing any and/or all of the acts alleged in the FAC.

**THIRTEENTH AFFIRMATIVE DEFENSE –RESERVATION OF RIGHT TO AMEND ANSWER**

13. Sazerac is without knowledge or information sufficient to form a belief as to whether it has addition and as yet unstated affirmative defenses to the FAC. Accordingly, Sazerac reserves the right to assert further separate affirmative defenses in the event discovery

indicates that such would be proper.

**WHEREFORE**, for the reasons set out above, Sazerac respectfully requests that the Court dismiss the FAC with prejudice and award Sazerac its costs and expenses incurred in having to defend this action, including reasonable attorney's fees.

Dated: June 19, 2009

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

/s/ Michael A. Attanasio

Michael A. Attanasio (151529)

Attorneys for Defendant
SAZERAC COMPANY, INC.